

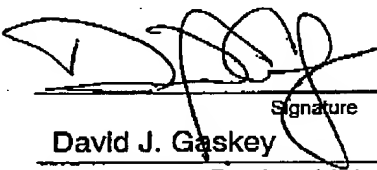
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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
		60469-033; OT-4776	
<b>CERTIFICATE OF FACSIMILE</b> I hereby certify that this Pre-Appeal Brief Request For Review and Notice of Appeal are being facsimile transmitted to (571) 273-8300. on <u>November 8, 2005</u> Signature <u>Theresa M. Palmateer</u> Typed or printed name <u>Theresa M. Palmateer</u>		Application Number <u>09/818,016</u>	Filed <u>03/26/2001</u>
		First Named Inventor <u>Celso Luis Mello</u>	
		Art Unit <u>3623</u>	Examiner <u>Van Doren, Beth</u>
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.			
This request is being filed with a notice of appeal.			
The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the			
<input type="checkbox"/> applicant/inventor.		Signature	
<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)		Typed or printed name	
<input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>37,139</u>		<u>248-988-8360</u>	
		Telephone number	
<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____		<u>November 8, 2005</u>	
		Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*			
<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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OT-4776

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application: Mello  
Serial No.: 09/818,016  
Filed: 3/26/2001  
Group Art Unit: 3623  
Examiner: Van Doren, Beth  
For: SYSTEM FOR REMOTELY MANAGING ELEVATOR  
MECHANIC SERVICE ROUTINE

**REQUEST FOR PRE-APPEAL BRIEF CONFERENCE**

Mail Stop AF  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This is being submitted with the Notice of Appeal for this application. Applicant respectfully submits that the rejection under 35 U.S.C. §103 should be withdrawn because there is no *prima facie* case of obviousness. There must be some motivation from within the art -- and not from Applicant's disclosure and claims -- for making a combination of references. In this case, there is no motivation and no *prima facie* case of obviousness because the proposed additions made by the Examiner to the *Lesaint, et al.* reference do not provide any benefit to the arrangement of that reference according to its teachings. Where there is no benefit to a proposed modification or combination, there is no legal motivation for making it. In other words, the proposed combination cannot be made.

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It is important to note that the *Lesaint, et al.* reference is concerned primarily with a rule based and stochastic scheduling algorithm for efficiently distributing tasks based on available resources. The way in which that algorithm operates is not in any way enhanced by incorporating the teachings from the *Bergeron, et al.* reference relied upon by the Examiner when attempting to establish a *prima facie* case of obviousness against claims 1-8 and 10. Adding a rejection or acceptance feature from the *Bergeron, et al.* reference does not provide any benefit to the arrangement in the *Lesaint, et al.* reference because it does not make that system any more efficient to reach its intended objectives. In fact, it appears at least somewhat contrary to the intentions of the *Lesaint, et al.* reference. *Lesaint, et al.* assume that once an appropriate individual "reports in," (column 4, line 66) or "calls in," (column 5, line 22) that individual will be assigned the task in question. There is no discussion anywhere within the *Lesaint, et al.* reference about giving an individual the option of accepting or rejecting a task. That reference appears to prefer the arrangement described in that document to enhance the efficiencies of the scheduling algorithm.

Without some benefit extending from a proposed combination (absent Applicant's own teachings regarding making such an arrangement), there is no motivation and no *prima facie* case of obviousness. The rejection of claims 1-8 and 10 based upon the improper combination of *Lesaint, et al.* and *Bergeron, et al.* should be withdrawn.

Additionally, even if the combination could be made, the result is not the same as what is recited in at least claim 4. There is nothing in either reference or the proposed combination of them that updates a status of a task responsive to information from a

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tracking device as recited in claim 4. There is no *prima facie* case of obviousness against claim 4, at a minimum.

Applicant respectfully submits that there is no *prima facie* case of obviousness against claims 9, 12-18 and 20 based upon the *Lesaint, et al.* reference. There is no suggestion whatsoever from within that reference for modifying it to make it consistent with what Applicant claims. It is improper hindsight to consider Applicant's disclosure and then determine whether it might be useful to make modifications to a reference to arrive at the same result. The Examiner is relying upon *Lesaint, et al.* alone to establish a *prima facie* case of obviousness, and therefore that reference must provide some suggestion or motivation for the modification proposed by the Examiner. As mentioned above, that reference is primarily concerned with a particular scheduling technique that uses a rule based assignment of tasks initially and then a stochastic technique for dynamically updating schedules. That technique will not be improved or enhanced by modifying it to make it consistent with Applicant's claims. Therefore, no benefit flows from the proposed modification and there is no legal modification for making it.

As discussed above, there cannot be a *prima facie* case of obviousness against a claim that includes a special service request acceptance or refusal by a mechanic. Therefore, there is an additional reason why there is no *prima facie* case against claim 13. Modifying *Lesaint, et al.* to make it consistent with claim 13 would go contrary to the teachings of that reference, which is not permissible under 35 U.S.C. §103.

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There is nothing within *Lesaint, et al.* that suggests automatically providing a mechanic information regarding items associated with a recommended routine responsive to an inquiry from the mechanic as recited in claim 13. The scheduling technique of *Lesaint, et al.* does not include any capacity for doing so.

With regard to claim 20, there is an additional reason why there is no *prima facie* case of obviousness. It cannot be considered obvious to add automatic billing to the scheduling arrangement of *Lesaint, et al.* Billing has nothing to do with setting the schedule for the tasks to be performed during a day, which is the primary concern of the *Lesaint, et al.* reference. Without any benefit flowing from the proposed modification, there is no motivation for making it and no *prima facie* case of obviousness. Applicant's disclosure and claims cannot be used as a basis for suggesting how to modify the prior art in an attempt to establish a *prima facie* case of obviousness.


Further, Applicant respectfully disagrees that "these are all fee for service industries, requiring the client to pay for the services completed by a service provider, such as a field technician." In many instances, a customer may not have to pay a fee upon completion of a task because there is a contract regarding such services that already covers such services. The Examiner ought to provide some proof regarding this feature and demonstrate how the teachings of an appropriate reference could be combined with *Lesaint, et al.* if the rejection against claim 20 is not withdrawn.

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Applicant respectfully submits that the §103 rejections should be withdrawn because, as presented, there is no *prima facie* case of obviousness.

Respectfully submitted,

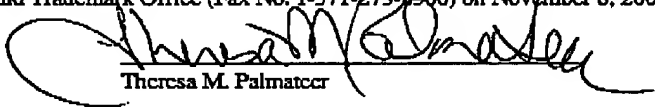
CARLSON, GASKEY & OLDS

By:   
David J. Gaskey  
Registration No. 37,139  
400 W. Maple Rd., Ste. 350  
Birmingham, MI 48009  
(248) 988-8360

Dated: November 8, 2005

CERTIFICATE OF FACSIMILE

I hereby certify that this Notice of Appeal relative to Application Serial No. 09/818,016 is being facsimile transmitted to the Patent and Trademark Office (Fax No. 1-571-273-2300) on November 8, 2005.

  
Theresa M. Palmatier

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